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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

GUATEMALA

1. The Committee considered the initial report of Guatemala (CCPR/C/81/Add.7 and HRI/CORE/1/Add.47) at its 1486th, 1488th and 1489th meetings, on 26 and 28 March 1996 (see CCPR/C/SR.1486, 1488 and 1489). Subsequently, at its 1499th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the initial report submitted by the State party and also welcomes the delegation's willingness to engage in a frank and fruitful dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative norms in Guatemala, it largely fails to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation which the delegation frankly admitted, a fact which the Committee appreciates. The Committee appreciated the presence of a competent delegation which provided helpful information to the Committee in addressing its questions and thus allowed it to obtain a clearer view of the overall human rights situation in the State party.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee notes that Guatemala continues to suffer from a long civil war, which has devastated the country for more than four decades. In the context of such conflict, gross and massive human rights violations have

occurred and, although some steps have been taken in recent years to achieve peace, the conflicting parties have not yet negotiated an end to the war. The situation of armed conflict which has prevailed since Guatemala ratified the Covenant has given rise to serious violations of human rights. The armed conflict has also subjected civilian governmental authority to the power of the military, which is incompatible with the legitimate functions of freely elected authorities and the purpose of elections.

4. The Committee also notes that various segments of the population, particularly persons who are or were members of the armed forces or government officials, or who hold economic power, continue to take advantage of a climate of impunity resulting in the most serious human rights violations and has been an obstacle to the rule of law in the State party.

5. The Committee further notes that social and economic disparities are all-pervasive in the country. High levels of poverty and illiteracy, lack of opportunities, and discrimination against the indigenous population, women and the poor contribute to widespread violation of human rights.

C. Positive aspects

6. The Committee expresses its satisfaction with positive changes for the protection of human rights since the signing of the Central American Peace Accords on 7 August 1987. It notes that some progress has been made towards entering a dialogue that would hopefully put an end to the situation of armed conflict and lead to the establishment of the rule of law. In that connection, the Committee notes the signing on 29 March 1994 of the Comprehensive Agreement on Human Rights, and consequently the establishment of the United Nations Mission in Guatemala (MINUGUA) and of its human rights component, as well as the conclusion of the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict on 23 June 1994.

7. The Committee welcomes the current Government's intentions to achieve a firm and lasting peace in Guatemala and its willingness to put an end to serious violations of human rights and to create a better political, constitutional and legal framework towards the full implementation of the rights enshrined in the Covenant. The Committee also welcomes the termination of offensive military actions decreed by the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the cessation of all counter-insurgency operations by the Government decreed by President Arzú. The Committee further welcomes the suppression of the obligatory military service, which will aid in the demilitarization of the country.

8. In that respect, the Committee welcomes positive steps taken by the recently elected Government, such as the dismissal of certain top officials of the armed forces and the reopening of a dialogue with the armed opposition on 22 February 1996. It also welcomes the elimination of the post of the Military Commissioner (Comisionado Militar) and the demobilization of more than 14,000 persons from the security forces.

9. The Committee welcomes Guatemala's ratification of the Covenant in 1992, as well as the adoption by Congress of legislation approving ratification of the Optional Protocol. It welcomes the indication made by the representatives of the State party that Guatemala will deposit its instrument of ratification to the Optional Protocol within the next few days.

10. The Committee welcomes the establishment of the Office of the Human Rights Procurator and the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH). The Committee also welcomes the legal reform undertaken in some areas, notably constitutional amendments to bring Guatemalan law in conformity with international human rights standards, the adoption of a new Code of Criminal Procedure and the enactment of a new Law on the Prosecutor's Office (Ley Orgánica del Ministerio Público), aiming at the investigation and punishment of human rights violations.

11. The Committee welcomes recent legislation making torture, forced disappearances and extra-judicial executions punishable offences in Guatemala. It also welcomes recent developments to curb the power of military tribunals and to bring cases of human rights violations by members of the army and the security forces under the jurisdiction of civil courts.

12. The Committee welcomes the recent elections and the fact that after a failed coup d'état the authority vested in freely elected officials was strengthened.

D. Principal subjects of concern

13. The Committee is concerned that the absence of a State policy for combating impunity has prevented the identification, trial and punishment if found guilty of those responsible, and the payment of compensation to the victims. The Committee is concerned that the delays and failures of the process of law, and the non-compliance by the police with court decisions and orders has heightened the public perception that justice cannot be obtained.

14. The Committee expresses concern that human rights violations continue to occur in Guatemala, particularly serious and systematic violations of the right to life and liberty and security of the person carried out by paramilitary groups, many of them linked to the State's security forces.

15. The Committee is concerned at the extension of the death penalty in a way which might not be in conformity with the requirements of article 6, paragraph 2, of the Covenant.

16. The Committee notes with alarm the information received of cases of summary executions, disappearances, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups or individuals (notably the Civil Self-Defence Patrols (PACs) and former military commissioners).

17. The Committee is concerned at the cases of violence against the repatriated population, which has resulted in extrajudicial executions, disappearances and torture or ill-treatment. In connection with this, it is concerned at the conduct of PAC members who have availed themselves of their position to harass repatriated persons.

18. The Committee notes with concern that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties are subject to intimidation, death threats and even murder, thus facing serious obstacles in the legitimate performance of their duties. The Committee deplores that effective measures have not yet been taken to prevent the recurrence of such acts.

19. The Committee is concerned that judges are subjected to supervision of an Executive Branch body which may affect their independence.

20. The Committee deplores the situation of street children in Guatemala, who are subjected to serious violations of their human rights under the Covenant, particularly their right to life and not to be subjected to torture and ill-treatment. The Committee is concerned at the intensity of abuse against street children by persons of authority, including the public and private police.

21. The Committee is concerned at customs and traditions prevailing in Guatemala which discriminate against women. It is particularly concerned at the statement by the delegation that State institutions are frequently not in a position to address the problems affecting the female population. The Committee is especially concerned at violence within the family which affects not only women but also children.

22. The Committee expresses concern at the specific impact of the prevailing violence within the country on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. In that connection, the Committee is concerned that despite the signing of an accord between the Government and the armed opposition on 31 March 1995 on the identity and rights of the indigenous population, the law on indigenous communities required by article 17 of the Constitution has not yet been enacted.

23. The Committee is concerned at the curtailment of the right of association, especially within the workplace. In this sense, it is concerned at the high levels of violence against trade union members, at the intimidation by agents of offshore operations and at the high number of cases of strikes that are deemed illegal.

E. Suggestions and recommendations

24. The Committee strongly encourages the Government to undertake a thorough review of the legal framework for the protection of human rights in the State party to ensure full conformity with the Covenant.

25. The Committee urges the Guatemalan Government to continue working in the process of national reconciliation which may bring lasting peace to Guatemalan society. The Guatemalan Government should take all pertinent measures to avoid cases of impunity and, especially, to allow the victims of human rights violations to find out the truth about those acts, to know who the perpetrators of such acts are and to obtain appropriate compensation.

26. The Committee recommends that the State party endeavour to bring to justice perpetrators of human rights abuses, notwithstanding the positions they may have held, in accordance with the Covenant. It urges the State party to investigate allegations of human rights violations, past and present, to act on the findings of its investigations, to bring to justice those suspected, to punish the perpetrators and to compensate the victims of such acts. Persons found guilty of having committed human rights violations should be expelled from the armed or security forces and punished accordingly.

27. The Committee recommends that the Office of the Human Rights Procurator and the presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) be strengthened, with regard both to resources and to jurisdiction, in order to ensure that they may effectively carry out their responsibilities.

28. The Committee recommends that all necessary measures be taken to ensure that human rights are respected by members of the army, the security forces and the police. It urges continuing vigorous action to ensure that persons responsible for human rights abuses not re-enter the police, army or security forces. Immediate steps should be taken to disband paramilitary and other groups, particularly the Civil Self-Defence Patrols (PACs).

29. The Committee recommends that an educational programme be devised so that all segments of the population, in particular members of the army, the security forces and the police, as well as present and former members of the Civil Self-Defence Patrols, develop a culture of tolerance and respect for human rights and human dignity.

30. The Committee urges the Government to take all necessary steps, including protective and pre-emptive measures, to ensure that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties, be enabled to perform their duties without intimidation of any sort.

31. The Committee recommends that the independence of the Judiciary be ensured and a law regulating it be enacted.

32. The Committee recommends that appropriate stringent measures be taken to ensure the fullest possible implementation of article 24 of the Covenant, including adequate protection of street children. Stern measures must be taken to punish those found guilty of committing any kind of violence against minors, especially against those who endure hard living conditions.

33. The Committee also urges that violence (especially within the home) and acts of discrimination against women (such as sexual harassment in the workplace) be established as punishable crimes.

34. The Committee recommends that further measures be taken to ensure that members of indigenous groups be protected against the prevailing violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity, language and religion. The legislation on indigenous communities should be enacted without delay.

35. The Committee urges that respect for human rights be institutionalized at all levels of the government and recognized as an essential element of the process of national reconciliation and reconstruction. To that end, the Committee recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.

36. The Committee urges the Guatemalan Government to restrict the application of the death penalty to those crimes which might be considered most serious, in accordance with article 6, paragraph 2, of the Covenant.

37. The Committee urges that MINUGUA continue its activities in the country until it certifies that it has fully discharged its mandate relating to human rights.